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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,320	01/27/2004	Manfred Fuchs	24,577-26US	9408

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EXAMINER

RAMIREZ, JOHN FERNANDO

ART UNIT	PAPER NUMBER
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3737

MAIL DATE	DELIVERY MODE
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10/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/765,320

Applicant(s)

FUCHS ET AL.

Examiner

John F. Ramirez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

After a review of applicant's remarks, all necessary changes to the claims have been entered. Accordingly, claims 1-13 have been cancelled.

Applicant's arguments filed 07/30/07 have been fully considered but they are not persuasive.

With respect to claim 20 rejected under section 35 U.S.C. 101, applicant alleges that the claimed subject matter is statutory. The Examiner of record disagrees with applicant comments because the claim is merely directed to a method of testing and modifying **signals**, which are non-statutory subject matter. Therefore, the claim is directed to an abstract idea.

With respect to claim 14 rejected under section 102 (b) using Ohyu et al. Applicant alleges that the Ohyu et al. reference does not teach "a processor... configured to support multiple threads of execution.... ". It is noted for the record that a recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claims. In re Pearson, 494 F. 2d 1399, 181 USPQ 641 (CCPA 1974); In re Casey, 370 F. 2d 576, 152 USPQ 235 (CCPA 1967). Accordingly, since claim 14 is an apparatus claim, and not a method claim, the intended uses disclosed by the applicant do not provide the necessary patentable weight to overcome the pending rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 20 is rejected under 35 U.S.C. 101 because:

On October 26, 2005, the USPTO published Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility. See: (<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf>).

This guidelines details a procedure for determining patent eligible subject matter. As to claim 20, the first step in this process is whether the claims fall within one of enumerated categories. In the immediate application, the claim is drawn to a process - a **"method for processing electromagnetic physiological signals"** - and meets this step. However, the analysis does not end here. The next step is whether a judicial exception (abstract ideas, laws of nature, natural phenomenon) is provided in the claim. In the immediate application, claim 20 clearly include one of the judicial exceptions in that "performing a source reconstruction for the signal and using the source reconstruction to determine an appropriate latency range" and the step of "performing a source reconstruction for the signal filtered for the different latency range, and using the source reconstruction to determine another appropriate latency range" are nothing more than abstract ideas. While abstract ideas alone are not eligible, the claim as a whole must be analyzed to determine whether it is for a particular application of the abstract idea. For claims including such excluded subject matter to be eligible, the claim must be for a practical application of the abstract idea, law of nature, or natural phenomena.

To satisfy the requirement of a practical application, the claimed invention must: (1) transform an article or physical object to a different state or thing; if no transformation, then (2) the claimed invention must produce a useful, concrete, and tangible result.

Regarding (1) above, the claims do not provide a transformation or reduction of an article to a different state or thing. Grouping equivalent dipoles based on predetermined criterion and solving inverse problems clearly do not transform an article or physical object to a different state or thing. Accordingly, one must then consider whether the claimed invention produces a useful, concrete, and tangible result.

(1) Useful Result

For an invention to be "useful" it must satisfy the utility requirement of section 101. The USPTO's official interpretation of the utility requirement provides that the utility of the invention has to be (i) specific, (ii) substantial and (iii) credible. See MPEP 2107. It can be argued that the claim does not provide a useful result in that the claim does not actually solve a problem. It does not appear to be specific as to how the problem is solved and, if solved, it is not specific as to the use of this solution.

(2) Tangible Result

The tangible requirement does not necessarily mean that a claim must either be tied to a particular machine or apparatus or must operate to change articles or materials to a different state or thing. However, the tangible requirement does require that the claim must recite more than a 101 judicial exception, in that the process claim must set forth a practical application of that 101 judicial exception to produce a real world result.

Regarding the tangible result requirement, the claim clearly does not provide a practical application. The problem, even if solved, is not practically applied to produce a real world result. For example, once the problem is solved, how is this then applied?

(3) Concrete Result

Another consideration is whether the invention produces a "concrete" result. Usually, this question arises when a result cannot be assured. In other words, the process must have a result that can be substantially repeatable or the process must substantially produce the same result again. Resolving this question is dependent on the level of skill in the art. For example, if the claimed invention is for a process which requires a particular skill, to determine whether the process is substantially repeatable will necessarily require a determination of the level of skill of the ordinary skilled artisan.

Regarding the concrete result requirement, the claim does not provide a result that can be assured in that the result cannot be substantially repeatable and the process can not substantially produce the same result again.

In view of the above analysis, applicant's claim 20 is a process which includes a judicial exception therein. Upon review of the claim as a whole, there is no transformation nor does the claim produce a useful, concrete, and tangible result. Accordingly, the claim is non-statutory.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-15 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohyu et al. (US 6,187,032).

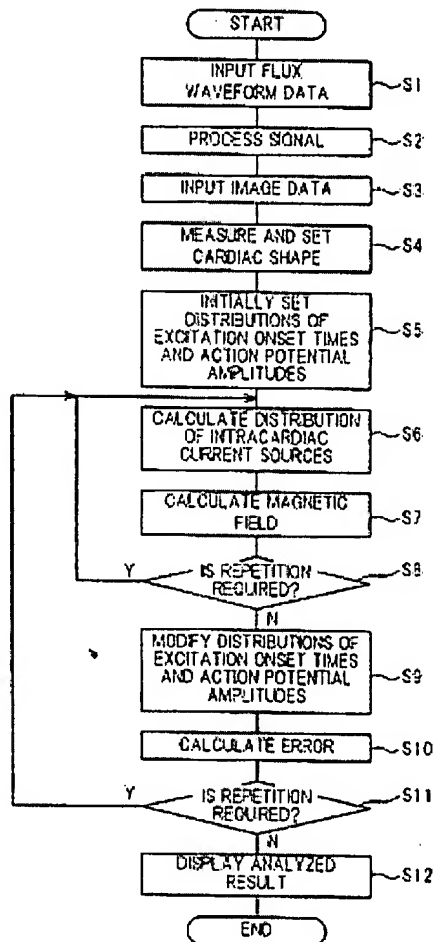


FIG. 7

With respect to claims 14, 15, 18 and 19, Ohyu et al. discloses an apparatus comprising a sensor for acquiring an electromagnetic physiological signal (Fig.4, col.10, lines 31-40), a signal processing circuit in communication with the sensor (Fig.4, col.10, lines 31-66 – col.11, lines 1-8), a processor in communication with the signal processing circuit and configured to support multiple threads of execution with one thread being a measurement module and a second thread being a source reconstruction module (col. 12, lines 4-20), a display showing source reconstruction results overlayed onto anatomical data (col. 4, lines 10-36), wherein the sensor acquires ECG and MCG data (col. 22, lines 38-54).

With respect to claim 20, Ohyu et al. shows in Figure 7 a method of testing comprising the steps of: acquiring an electromagnetic physiological signal, performing a source reconstruction of the electromagnetic physiological signal (S5, S6, S7), and using the source reconstruction to modify the acquisition of a new electromagnetic physiological signal (S9).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16 and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Ohyu et al. (US 6,187,032) in view of Kiyuna (US 6,073,040).

Ohyu et al. teaches all the limitations of the claimed subject matter except for mentioning specifically the steps wherein the sensor acquires MEG and EEG data.

However, the steps wherein the sensor acquires MEG and EEG data are considered conventional in the art as evidenced by the teachings of Kiyuna (US 6,073,040).

The Kiyuna patent teaches the steps wherein the sensor acquires MEG and EEG data (see abstract, Figure 1, col. 8, lines 47-67, col. 9 lines 1-31).

Based on the above observations, for a person of ordinary skill in the art, modifying the method disclosed by Ohyu et al., with the above discussed enhancements would have been considered obvious because such modifications would have provided an electrophysiological activity estimation method to estimate the number of dipoles with accuracy of active areas of a selected part of a living body.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John F. Ramirez whose telephone number is (571) 272-8685. The examiner can normally be reached on (Mon-Fri) 7:00 - 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (571) 272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JFR



JOHN F. RAMIREZ
Examiner
Art Unit 3737